IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 8396 OF 2005

Suresh Dattatraya Joshi ....Applicant.

V/s

Alka Vijayrao Gharat & anr. .....Respondents.

Mr. S.M. Shethigar for the applicant.

Mr. S.K. Shetty for Respondent No.1.

CORAM: V.M. KANADE, J.
DATE : 3rd October, 2007.

P.C.:

1. Heard the learned Counsel appearing on behalf of the applicant and the learned Counsel appearing on behalf of Respondent No.1.

2. Applicant is challenging the judgment and order passed by the Trial Court whereby respondent - accused has been acquitted by the learned Magistrate of the offence punishable under section 138 of the Negotiable Instruments Act.

3. The learned Counsel appearing on behalf of the applicant has filed compilation of documents which includes documentary evidence as also notes of evidence which is relied upon by both the parties in trial court.

4. Complainant is the Chairman of Suraksha Rakshak Kamgar Puravtha Sahakari Sanstha Ltd. It is alleged that the accused who was the Managing Director of J.S.I.B. & Safety Security, gave a cheque of Rs 50,000/- to the complainant alongwith a covering letter and the said cheque was deposited in the bank. The said cheque was dishonoured and, thereafter, after issuing legal notice, present complaint was filed under section 138 of the Negotiable Instruments Act. Respondent - accused contended that there was no legal dues payable to the complainant and, as such, there was no existing debt or liability. It is further alleged that the statutory notice was not served on the accused. Further, it was alleged by the accused that the cheque was stolen by the worker of the complainant and that it was misused by the complainant. The Trial Court, after perusing the evidence on record, has recorded a finding that the statutory notice was not served and it has further held that the accused had rebutted the presumption which is raised under section 139 of the Negotiable Instruments Act and, therefore, the complainant had not established that the cheque was issued in respect of any existing debt or liability.

5. I have perused the oral and documentary evidence. No case is made out by the applicant for interfering with the impugned order. Hence, leave to file appeal is refused. Application is accordingly dismissed.

(V.M. KANADE, J.)